

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

**At a stated Term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 22nd day of September, two thousand and
nine.**

Present:

ROGER J. MINER,
CHESTER J. STRAUB,
RICHARD C. WESLEY,
Circuit Judges,

JULIA BASILE,

Plaintiff-Counter-defendant-Appellee,

- v -

No. 07-3404-cv

WALTER SPAGNOLA,

Defendant-Counter-claimant-Appellant

FRANCES ROSALES
DONNY ESCHRICH
ANDREW SCARPULLA
THE NEW YORK STATE THURWAY AUTHORITY
RICHARD IUELE

Defendants

For Plaintiff-Appellee: DRITA NICAJ, Lovett & Gould, LLP
 White Plains, New York

For Defendant-Appellant: ELANA L. YEGER, Law Office of
 Elana L. Yeger,
 Spring Valley, New York

1 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,
2 AND DECREED that the judgment of the district court is
3 AFFIRMED.

4 Appellant Walter Spagnola appeals from a final judgment
5 of the district court after a June 21, 2007 jury verdict
6 awarding Appellee Julia Basile \$150,000.00 in compensatory
7 damages and \$50,000.00 in punitive damages in her action
8 against Spagnola pursuant to 42 U.S.C. § 1983. We assume
9 the parties' familiarity with the underlying facts, the
10 procedural history of the case, and the issues on appeal.

11 Spagnola argues that the district court erred by
12 denying his motion for judgment as a matter of law under
13 Federal Rule of Civil Procedure Rule 50. We review the
14 court's denial de novo, requiring the movant to show that
15 there is no legally sufficient evidentiary basis for a
16 reasonable jury to find in favor of the non-movant. *Cross*
17 *v. N.Y. City Transit Auth.*, 417 F.3d 241, 247-48 (2d Cir.
18 2005). In reviewing the sufficiency of the evidence, we

1 draw all inferences in favor of the non-moving party; this
2 means we cannot determine the credibility of witnesses,
3 weigh conflicting evidence, or substitute our judgment for
4 that of the jury. *Gronowski v. Spencer*, 424 F.3d 285, 291-
5 92 (2d Cir. 2005). We may not retry the case ourselves.
6 *Id.* at 292. We may only overturn a jury's verdict when no
7 evidence exists to support that result, or there exists such
8 overwhelming evidence in favor of the appellant that the
9 verdict is unreasonable. *LeBlanc-Sternberg v. Fletcher*, 67
10 F.3d 412, 429 (2d Cir. 1995).

11 In this case, Basile presented testimony from herself
12 and two other witnesses about multiple incidents of
13 inappropriate behavior by Spagnola. These witnesses
14 detailed inappropriate behavior by Spagnola, including
15 touching Basile's thighs and breasts, offering her job
16 security in return for sex, and showing up uninvited at
17 Basile's residence. Based on the offensive behavior
18 described, the jury's conclusion was reasonable. The
19 evidence was sufficient to find that there was a hostile
20 work environment because such conduct was hostile, severe,
21 and abusive. See *Quinn v. Green Tree Credit Corp.*, 159 F.3d
22 759, 767-68 (2d Cir. 1998). The court properly denied
23 Spagnola's Rule 50 motion.

1 Spagnola also argues that the district court erred in
2 denying his *in limine* motions regarding Basile's prior
3 sexual conduct and a conviction for petit larceny. We
4 review the district court's evidentiary rulings for abuse of
5 discretion. *United States v. Fell*, 531 F.3d 197, 209 (2d
6 Cir. 2008).

7 The district court did not abuse its discretion when it
8 denied Spagnola's motion *in limine* concerning Basile's
9 sexual conduct at the workplace. Under Federal Rule of
10 Evidence 412, evidence of a plaintiff's sexual behavior or
11 sexual predisposition is inadmissible except in limited
12 circumstances when the prejudicial effect of the evidence is
13 substantially outweighed by its probative value. FED. R.
14 EVID. 412.

15 We have previously held that Rule 412 applies to sexual
16 harassment lawsuits. *Wolak v. Spucci*, 217 F.3d 157, 160 (2d
17 Cir. 2000). We have also established that a plaintiff's
18 private sexual behavior does not change her expectations or
19 entitlement to a workplace free of sexual harassment. *Id.*
20 Spagnola sought to introduce testimony that Basile had
21 flashed her breasts at the workplace when Basile was off-
22 duty. Spagnola did not witness the event himself, relying
23 on hearsay from a co-worker. The court declined to admit
24 the evidence, finding that the prejudicial effect of the

1 evidence outweighed the probative value. However, the court
2 stated that the ruling was merely a preliminary one, and
3 provided Spagnola the opportunity to produce eyewitnesses
4 who could testify as to the incident. He failed to do so.
5 In light of this, it was not an abuse of discretion for the
6 court to deny Spagnola's motion *in limine* and preclude
7 evidence of Basile's sexual conduct.

8 The district court also did not err when it refused to
9 admit evidence of Basile's prior conviction for petit
10 larceny. Spagnola wished to use Basile's conviction to
11 impeach her, alleging she had misrepresented her criminal
12 history on her job application. The court provided
13 Spagnola with the opportunity to glean the impeachment value
14 of the conviction through a specific question targeted at
15 uncovering her alleged deceit, not the fact of the
16 conviction itself. Spagnola took the opportunity to do so.
17 He now alleges that this was insufficient and that Basile's
18 prior conviction should have been automatically admissible.

19 Prior convictions may be admissible in order to impeach
20 a witness's credibility. FED. R. EVID. 609. However, where
21 the record indicates that Spagnola did not provide
22 sufficient evidence for the district court to determine the
23 facts underlying the petit larceny conviction or whether the
24 date of conviction was more than ten years earlier, the

1 district court could not properly engage in the analysis
2 required by Rule 609. The court did allow Spagnola to
3 attack Basile's credibility more generally. The court did
4 not abuse its discretion.

5 Accordingly, the district court judgments denying the
6 Rule 50 motion and denying the motions *in limine* are hereby
7 AFFIRMED.

8
9 For the Court
10 Catherine O'Hagan Wolfe, Clerk
11

12 By: _____